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THE CORPORATION TAX DECISION.

The pith of the corporation tax decision is, as we gather it, in its ruling that an excise tax may be imposed upon "the actual doing of business in a certain way." It seems a little strange to us that the premise upon which the entire superstructure of the opinion rested is not more clearly established.

The opinion of Mr. Justice Day devotes less than a page to this necessary ingredient of constitutionality and the only direct authority he cites is the following general language from Cooley's Constitutional Limitations, 7th Ed., 680: "Excises are taxes laid upon the manufacture, sale or consumption of commodities within the country, upon licenses to pursue certain occupations and upon corporate privileges." Even this does not define the kind of "corporate privileges" that are taxable.

From Thomas v. United States, 192 U. S. 363, he quotes Chief Justice Fuller, referring to duties, imposts and excises, as saying: "We think that they were used comprehensively to cover customs and excise duties imposed on importation, consumption, manufacture and sale of certain commodities, privileges, particular business transactions, vocations, occupations and the like."

There is little in this excerpt even if the *arguendo* part of an opinion should weigh very heavily, that refers to the "doing of business in a certain way."

He satisfies himself with an effort to produce direct authority with a further quotation from Chief Justice Fuller, in the Pollock case, as follows: "Although there have been from time to time intimations that there might be some tax which was not a direct tax nor included under the words, 'duties, imposts and excises,' such a tax for more than one hundred years has as yet remained undiscovered, notwithstanding the stress of particular circumstances has invited thorough investigation into sources of revenue." How this serves for authority at all we confess our inability to understand, even had there been any such question before the court in the Pollock case as taxing a corporate privilege.

Though the learned Justice then proceeds on the assumption that "the actual doing of business in a certain way," he yet has not shown how corporations do business in a way that is different from individuals.

Further along we seem to learn that a corporation does business in a certain way that is different from the way an individual does business, because a corporation acts under a franchise and an individual acts under his constitutional right to enter into contracts.

But how is that doing business in a way different from the way an individual does business? Both have a right to do business. A contract binds the artificial person in precisely the same way it binds the natural person. Merely the source of the right is different in the one case from what it is in the other.

Take the case of a *feme sole* and a *feme covert*. The former has the absolute right of contract. For the latter the statute creates the privilege of contract with or without her husband's consent. May Congress lay an excise tax on the *feme covert's* privilege of doing business?

But the court, further on, and as seemingly only necessary to show what Congress may do in levying an excise tax, where there is no dispute that it is such, says: "The thing taxed is not the mere dealing in merchandise, in which the actual transactions may be the same, whether conducted by individuals or corporations, but the tax is laid upon the privileges which exist in conducting business with the advantages which inhere in the corporate capacity of those taxed and which are not enjoyed by private firms or individuals. * * * The continuity of business, without interruption by death or dissolution,

the transfer of property interests by the disposition of shares of stock, the advantages of business controlled and managed by corporate directors, the general absence of individual liability, these and other things which do not inhere in the advantage of business thus conducted, which do not exist when the same business is conducted by private individuals or partnerships."

When one gets through with all of this enumeration and lets his experience or imagination find others the learned Justice has not catalogued, the "previous question" will recur: What is the difference in the actual doing of business if "the actual transactions in the business may be the same?" Has it ever before been decided that a corporation may be taxed for doing the precise thing, whether it be by vocation, occupation or what, for the doing of which an individual may not be taxed?

Suppose we pursue this reasoning of the court as to a partnership. There are many advantages inhering in a partnership not enjoyed by one trading singly on his own account. The law makes one partner the agent of the other and as between themselves, taking it that all members are solvent, lessens ultimate liability. Its affairs may be wound up in a different way than if a trader had no partner, and this might be deemed of great advantage. The law has endeavored so to make it. The venture in business may be deemed less hazardous to private fortune than going into business alone. The law grants privileges. Why cannot this be considered such a difference in the actual doing of business as makes it subject to an excise tax?

It must be admitted that, if there is a basis for an excise tax to rest upon, it is little answer to say the privileges which emanate from a state are non-taxable, because state sovereignty is interfered with. The Constitution intended that its excises should go into every part of the country where revenue could be gathered for the government's support.

It might be said that, if a state licenses vocations, it invites their being followed, and, if an excise tax is additionally imposed, state policy is interfered with. What it encourages is by the imposition of a federal tax discouraged, and the latter might indeed be so burdensome that state policy would be defeated. Nevertheless the right to revenue from an excise tax is paramount.

With all of this concession, however, we fail to find where the learned Justice has pointed to a single authority that even hints at saying that anyone, whether that one be an artificial or a natural person, may be subjected to any tax, be it direct or indirect, for doing precisely the thing for which another may not be constitutionally taxed. And that is the whole question.

This decision seems to us like a *petitio principii*. It begs the whole question for its main premise. Its bald assertion that there is a difference in the actual doing of business by a corporation and by an individual or a partnership is like the assertion, by Justice Story, in Swift v. Tyson, 16 Pet. 1, of a federal courts independence in interpretation of state law. From the day that assertion was made no judge has ever tried to state upon what constitutional ground that assertion rested.

NOTES OF IMPORTANT DECISIONS

INTERSTATE COMMERCE—THE BASIS UPON WHICH A RATE PRESCRIBED BY INTERSTATE COMMERCE COMMISSION MUST REST.—The power vested in the Interstate Commerce Commission is to condemn unjust and unreasonable rates and fix reasonable ones. The standpoint from which rates are to be regarded as unjust and unreasonable or reasonable and, therefore, whether the commission has exceeded its powers and entered a void order were the questions before the court in Southern Pacific Co. et al. v. Interstate Commerce Commission, 31 Sup. Ct. 288.

The Chief Justice, speaking for the entire court, considers that it is virtually conceded, that though an order condemning a rate as unjust and unreasonable and fixing a new rate as reasonable may be "couched in a form which would cause it, superficially considered, to ap-

pear to be but the exercise of an authority to correct an unreasonable rate, still the record back of the order may be looked to to see whether it "was based upon an assumption" of power not conferred by law. If this appears, then the courts must review and correct an abuse of power.

In going into the record, it appears that there was no testimony showing that the rate condemned was an unreasonable rate to be charged for the service to be rendered, but that the advance from $3.10 to $5.00 per ton upon lumber shipped from Williamett Valley, Oregon, was inequitable and unjust to that locality, in that the lower rate having been fixed to encourage the building up of the lumber industry there was a result which could not have been otherwise attained and there was an estoppel, arising out of the situation, against the railroad. The Chief Justice intimates that to proceed upon any such theory implies the existence of an "abnormal and extraordinary power," which "would open a vast field for the exercise of discretion, to the destruction of rights of private property in railroads, and would in effect assert public ownership without any of the responsibilities which ownership would imply."

The effect of this ruling is to inform the Commission that it has nothing whatever to do but determine whether a rate is fairly based upon service rendered. It is not attempted to be stated what elements are proper to be considered in the conclusion of what is a just and reasonable rate, but if it appears that this conclusion was seriously influenced by considerations bearing in no way upon what, as an independent question, is proper remuneration for service rendered, it ought to be set aside.

As also involved in such ruling it is, perhaps, to be said, that there must exist in the record a sufficiency of legitimate data to support the condemnation of an old rate and the fixing of a new one. In other words, the finding of this special tribunal is not like the judgment of a court of general jurisdiction which has every intendment in its favor.

The Chief Justice after ruling, in effect, that whatever the form of the order in the case at bar might have been, it could not stand, because shown by the record to be based on a wrong assumption of power, shows that this particular order bears evidence on its face of its invalidity, because it takes that assumption into consideration.

The decision is a clear exposition of the limit of power vested in the commission and should prove a very effective warning against this being overstepped in the future.

The decree of the lower court was reversed with directions to enter a decree declaring the Commission's order void.

ELECTIONS — FACTS CREATING PRESUMPTION THAT VOTER KNEW THAT HIS VOTE WAS BEING CAST SO AS NOT TO BE COUNTED.—The majority and minority of Wisconsin Supreme Court seem in agreement upon the proposition, that, if a voter either knows as a matter of fact or is bound in law to know that a candidate is ineligible or that he is dead, at the time the vote is cast, his vote is to be considered as not cast at all—at least the minority does not dispute this position as one of general law. State ex rel. v. Freer, 128 N. W. 1068.

This proposition, nowever, has been denied in Missouri, as see State v. Walsh, 7 Mo. App. 142, approved in Sheridan v. St. Louis, 183 Mo. 25, 81 S. W. 1082, 2 Am. & Eng. Am. Cas. 480.

The ruling adopted by the Wisconsin court involves the consequence, that all votes cast for an ineligible or impossible candidate, known by the voters to be such, are considered as blanks and the candidate receiving the highest number of other votes becomes the nominee or elect, accordingly as the election is primary or regular.

Taking the Wisconsin rule as that seemingly supported by the great weight of authority, it then becomes pertinent to inquire in what way or for what reason may it be concluded, that voters know or were to be considered as knowing of the existence of a fact, which would sufficiently indicate that they were doing a vain thing, when apparently acting in good faith in a directly reverse way.

The majority opinion quotes from People v. Clute, 50 N. Y. 451, 10 Am. Rep. 508, that "the knowledge (of the disqualification) must be such, or the notice brought so home, as to imply willfulness in acting, when action is in opposition to the natural impulse to save the vote and make it effectual. He (the voter) must act so in defiance of both the law and the fact, and so in opposition to his own better knowledge, that he has no right to complain of the loss of his franchise, the exercise of which he has so wantonly misapplied."

This gives something of a rule as to the weight, but not as to the character, of evidence needed to say that a voter has wantonly misapplied the exercise of his franchise.

Another decision is cited where it was said if the "person voted for had been a fictitious person and this appeared on the face of the ballot," then canvassers could reject the ballot. State v. Tierney, 23 Wis. 430. And Lord Campbell sugested in Regina v. Coak, 3 El. & Bl. 249, that a ballot would be no ballot

where it was cast for "the man in the moon."

It is seen that both of these cases proceed upon what the ballot shows on its face.

But the case of State v. Ex. rel. v. Frear supra allows knowledge to be established by aliunde evidence. Thus it appears that a primary election was to be held and among the candidates whose names were allowed to go upon the printed ballots in a state wide primary election was the name of Frank T. Tucker for the office of Attorney General. Within two or three days of the holding of the election, he was drowned. It was too late under the statute, for these ballots to be changed in any particular. The managers of this faction of the Republican party sent advices far and wide of the candidate's death and urged that ballots be cast for him as if he were alive. It was recited also that the press all through the state published the news of his death. These managers took the position that, if the votes for the deceased were the highest in number, the political committee could fill a vacancy. The court ruled that it should be found that at least enough votes were cast by voters who knew the candidate was dead to wipe out his plurality.

This seems quite a slipshod sort of ruling. It is not pretended that the court could name a particular voter or the exact number of voters or approximately that number, who knew absolutely that they "wantonly misapplied" the exercise of their franchise.

Indeed the court seemed influenced by the fact, that because it was heralded abroad that there would be a vacancy that voters acted on that theory. But that is directly opposed to the presumption that voters knew such was not the law.

Furthermore, other considerations are involved, than the right of a particular voter to have the exercise of his franchise stand as exercised, that is, there is legal expression of his will to which a right in favor of another or others attaches. Therefore every ballot fair on its face should be presumed conclusively to have been intended to be counted as a ballot.

It seems to us, that a voter is in this respect like a juror. He should not be allowed to impeach his ballot. If it is not allowed to call voters one by one and inquire of them if they had actual knowledge of ineligibility or impossibility in candidacy, why should it be allowed to show they must have had such knowledge, when their acts in good faith tend to demonstrate the absence of knowledge?

Again it may be said, that, as votes one by one must be excluded, why should they be excluded wholesale and without imputation of knowledge by any particular voter? It is the units, in this kind of a question, which make up the aggregate which is needed for a conclusion.

The court recites circumstances which are very persuasive toward the conclusion of fact it adopts, but there seems an opening of the door for a wide range in proof against a presumption of law. There is instanced the facilities for transmission of news, the rural free delivery, the tragic circumstances of the candidate's death, all of which go to show how loose may be inquiry, if such a decision as we note shall stand as a precedent.

JURISDICTION — EXCEPTION TO THE RULE IN MOOT QUESTION CASES.—We criticised in 72 Cent. L. J. 112, a decision by Eighth Circuit Court of Appeals, where relief was denied in a suit in equity, for injunction and relief, because after the suit was filed an order by the Postmaster General, which gave the only ground for resort to a court of equity, was rescinded after the suit was begun. We contended then, that a court of equity having rightfully acquired jurisdiction could give full relief, while the majority ruling (for the decision was dissented from) was that the element of the controversy upon which the right to proceed in equity having disappeared, the right to continue in a court of equity ceased.

Another reply to that court's contention may be found in the case of Southern Pacific Terminal Co. v. Interstate Commerce Commission, 31 Sup. Ct. 279, decided since our criticism was made.

This case speaks of the well-settled rule that a court "will only decide actual controversies," and if something occurs, without fault of defendant, which renders it impossible to grant plaintiff effectual relief, the court will not proceed. But it is said that those cases are where it is not important to define status.

In the case before the court there was an order by the Interstate Commerce Commission requiring appellants to desist from the giving certain party an alleged undue preference, which order was limited in operation up to a certain time. When the case came on for a hearing, that time had expired. The question was claimed to be moot, and a dismissal of the appeal was asked.

Justice McKenna, speaking for the court, said: "In the case at bar the order of the commission may, to some extent (the exact extent it is unnecessary to define), be the basis of further proceedings. But there is a broader consideration. The question involved in the orders of the Interstate Commerce Commission are usually continuing (as are manifestly those in the case at bar), and these considerations ought not to be, as they might

be, defeated by short term orders, capable of repetition, yet evading review, and at one time the government, and at another time the carriers, have their rights determined by the Commission without a chance of redress."

The learned Justice then shows how a combination proceeded against in U. S. v. Trans-Missouri Freight Asso. 166 U. S. 290, sought to make the question a moot one by dissolving the agreement, but the court ruled that to obtain this dissolution was not "the most important object of this litigation. * * * Private parties may settle their controversies at any time, and rights which a plaintiff may have had at the commencement of the action may terminate before judgment is obtained." But this rule was held not to stop the government from obtaining a judgment in that case.

Applying that decision in favor of a private party against the Commerce Commission, Justice McKenna said: "The interests there passed upon are no more of a public character than those involved in the order of the Interstate Commerce Commission in the case at bar, and there was no greater necessity for continuing a jurisdiction which had properly attached."

This same principle was held in Boise City I. & L. Co., 131 Fed. 415, 65 C. C. A. 399, decided by 9th Circuit Court of Appeals, which could have been advantageously consulted by the Eighth Circuit Court of Appeals, when it decided the case we criticise.

We see, however, that when a public question is at stake and it is important to settle a right arising under administrative action, a question that would be moot in controversies between private parties, will not be so regarded.

SUGGESTIONS ON RAILROAD RATE REGULATION

Railroad rates are so widely, and yet so intimately, inter-related in this country that the rates prescribed for one road affect other roads, and the rates prescribed in one state affect the rates existing in other states, and the fixing of intrastate rates often necessarily affect interstate rates.

After long hesitation on the part of the Supreme Court of the United States it was settled that the constitutional grant of power to the Congress of the United States to regulate interstate commerce is an exclusive power, and cannot be directly interfered with by the states, and so, on the other hand the power to regulate intra-state commerce is an inherent and reserved power of the several states with which the congress cannot interfere.

In the comparatively brief experience this country has had with federal and state regulation of railroad rates, it has become evident, in some cases, where a railroad extends through and serves two or more states, that the action of one of such states in lowering its intra-state rates necessarily operates as an unjust discrimination against another of such states.

This was very clearly brought out in the Master's Report in the Minnesota rate cases, where it was shown that a certain road extending through and beyond one state, served two cities in different states, one just within the eastern line of the state traversed by the road, and the other just beyond said line in another state, but both similarly situated with respect to the road, and the two cities, say, dealing with towns and cities along the line of the road, in the same state with one of such cities, and with other towns, and cities in different states from either of said two cities and situated just beyond the western line of the state traversed by said road.

Under such conditions the lowering of intra-state rates in one state gave the city in that state the advantage over its rival of the other state by enabling it to supply intra-state cities along the line of the road at less cost than could the rival city of the other state, and the same would be true as to cities of other states along the road which had before been supplied by the two cities under similar conditions.

The intimate bond and sympathy between rates of the different kinds make it inevitable that in order to fair, just and equitable regulation of rates, there must be co-operation and co-ordination between the regulating powers.

But with congress restricted by the constitution to the regulation of interstate rates alone, and the states left to the regulation of their own domestic rates, separately and severally, how is such combined action to be attained?

more than a century (except for the settlement of boundary disputes between states) to meet in a considerable measure the existing conditions in this country pertaining to the difficult subject of rate regulation.

In section ten of the federal constitution is the following clause, to-wit: "No state shall, without the consent of congress, * * * enter into any agreement or compact with another state, or with a foreign power."

While this language is in the form of a negative, it involves an affirmative, and the affirmative is, that any state shall with the consent of congress, have the power to enter into any compact or agreement with another state; that is, any compact or agreement which in its sovereign capacity it might have entered into (without the consent of congress) had this clause not been in the constitution.

Wherever, therefore, a railroad extends through several states, such states under the authority of this clause of the constitution could by agreement adjust and correlate their respective rates for such road, to become effective when the consent of congress should be given thereto, such adjustment, of course, being based on the varying conditions in the several states in respect to population, industrial development, road conditions, etc.

This method would not be subject to the objection that it was a regulation of interstate commerce by the interested states, because by the terms and effect of the agreement neither of the states would undertake to regulate anything but its own domestic rates, and the interstate rates would doubtless become automatically the sum of the local rates.

If, however, it should be a fact that the agreement between or among the states should have the effect of regulating interstate commerce, nevertheless, it being without any legal efficacy whatever until consented to by the congress, such agreement would, after all, upon receiving such consent, be but the regulation of interstate commerce by congress in a particular way, and not by the states who submitted the proposed agreement to congress.

It occurs to me it is possible by the application of a provision that has practically lain dormant in the federal constitution for

While the power conferred on congress to regulate interstate commerce is exclusive, it is conferred in general terms without any restriction as to the manner of its exercise; in such cases, there is a discretion in congress to adopt any means appropriate and necessary to carry into effect the granted power; and in the cases under consideration, there is no reason why congress may not adopt such state agreements as regulations pro tanto of interstate commerce.

It seems to me there is some field of operation for this clause of the constitution, if wisely and conservatively employed, in harmonizing and adjusting railroad rate regulation as between the federal and state governments and as among the states.

Take, for instance, the case of one railroad system with its lines extending through several states, manifestly such a road should give the entire territory served by it fair and equitable rates upon all commodities hauled by it; the system is an entirety, its duties as to equitable treatment extend to the whole territory served by it; the mere fact that freight in transportation crosses states lines has no bearing or influence on rates; to say the rates on commodities transported under like conditions in two states must change immediately on the passage of a train across the line separating the states, can, of course, be justified upon no logical basis, it is simply an arbitrary change, the result of legislative might, and destructive of that equality which should subsist throughout the whole territory served. Not only may such a change of rates be unjust, per se, but the lower rates in one state might enable its manufacturers and producers to market their products at lower prices than can those in other states served by the same road and who deal in like products and with the same localities.

Naturally, also, the distribution of equipment, and of the maintenance of ways and structures among the states would be mat-

ters in respect to which the interested states would want fair and equitable treatment.

All such matters, in addition to rates, might be regulated by agreement among the interested states and consented to by congress.

I think it is becoming evident more and more that unless there can be joint action between congress and the states in regulating railroad rates in some such manner as herein suggested, the final outcome must be that the whole business of regulation will be absorbed by congress. It will be claimed that in the nature of things, intra-state and inter-state rates are so inseparably connected that the regulation of one is the regulation of the other—that the whole business of rate regulation is a unit and is a question affecting the whole country, and therefore a national matter with which congress alone can adequately deal, and not the states.

Any remedy that could be found should be tried before resorting to such a decided and dangerous step towards centralization of government, and it is with the hope of aiding in avoiding such a result that I have submitted the suggestions herein set forth.

Nor am I sure the application of this constitutional provision may not prove useful by an extension of it to other economic and governmental problems we have been doubtless so much accustomed to regard the inhibition, or negative, expressed in this clause, as to give little or no consideration to its implied affirmative.

The implied affirmative power there left in, or reserved to, the states exists, as has been said, in the fullest amplitude it must be held to leave the states the right to agree among themselves, with the consent of congress, in respect to any and all matters not expressly prohibited to the states by other clauses of the constitution, as, for instance, the making of treaties, coining money, and some few others.

I think it may be said it is impracticable for railroad rates to be fairly and justly regulated either by the congress acting independently of the states in respect to inter-state rates, or by the states acting independently of congress and of each other, in respect to intra-state rates.

Why, also, may not the same constitutional clause serve a purpose in dealing with the corporate feature generally, as well as with other troublesome problems, as, for instance, waterways, conservation of natural resources, etc? If so, it would be but another instance in which the scope and effect of a constitutional provision has been found adequate to extensions and applications not dreamed of at the time of the adoption of the constitution.

It goes without saying that any general public question which could be settled by joint federal and state action, would be considered as better and more satisfactorily settled than would any settlement of the same question brought about by either the federal or state governments acting independently; every such joint settlement would tend to strengthen harmonious relations between the states and the general government, and to keep down jealousies among the states. So, also, if it be open to two, or four, or ten states by virtue of this clause of the constitution to enter into an agreement or a compact in respect to a matter affecing their interests, it is equally open to all the states to do so, with the consent of congress, in respect to a matter of interest common to all the states.

Possibly, it may be added, this constitutional clause may shed a ray of light to penetrate even the shadows of the so-called "twilight zone," of whose existence we were advised not a great while ago by a great American.

So far as concerns the railroad rate question, there is nothing suggested herein which involves any idea of abolishing either the Interstate Commerce Commission or the several State Railroad Commissions; on the contrary, they would be the most appropriate agencies through which the federal government and the state governments could act in the preliminaries leading up to the agreements, in the drafting of the agreements and in looking after the carrying out of the agreements after they were made, and in submitting such alterations as

time and experience might prove to be necessary. Of course, in respect to all agreements affecting rates, it is contemplated in the foregoing suggestions that the railroads interested should have the opportunity to be heard.

W. S. THORNINGTON.

Montgomery, Ala.

CARRIERS—WAIVER.

OLD DOMINION S. S. CO. et al. v. C. F. FLANARY & CO.

69 S. E. 1107.

(Supreme Court of Appeals of Virginia. Jan. 26, 1911.)

The act of a carrier in sending at the request of the consignee tracers for a lost shipment after the time fixed in the bill of lading for service of notice on it of a claim for loss essential to hold the carrier liable, does not amount to a waiver of its right to rely on its exemption if the goods are not located; there being nothing to indicate that the carrier did not intend to insist on its contract rights nor anything to show that the consignee was prejudiced.

KEITH, P. On the 5th of September, 1906, goods were shipped by Dunham & Co. and the Claflin Company, of New York, by the Old Dominion Steamship Company and connecting lines, to C. F. Flanary & Co., at Wise, Va. The goods were never delivered, and in the early part of October tracers were sent out by the transportation companies to discover what had become of them, but they were never found, and in December, 1908, Flanary & Co. brought suit in assumpsit against the Virginia & Kentucky Railway Company, the Norfolk & Western Railway Company, and the Old Dominion Steamship Company to recover the value of the goods.

The bill of particulars shows that the bill shipped by Dunham & Co. on the 5th of September, 1906, amounted to $302.01, and the freight paid upon it was $3.65; the shipment by the Claflin Company on the same day was valued at $125.98, and the freight upon it was $2.63; and it was agreed between the parties that, if the plaintiffs were entitled to recover, they should have a judgment for $434.27.

The court directed the jury by their verdict to answer certain questions, as follows:

"(1) Were the goods sued for in this case delivered by Claflin & Co. and Dunham & Co., respectively, to the Old Dominion Steamship Company, on or about September 5, 1906, for shipment to C. F. Flanary & Co. at Wise, Va.?" To which the jury answered: "Yes."

"(2) Were the goods sued for herein ever received by C. F. Flanary & Co. at Wise, Va.?" Answer: "No."

"(3) If the said goods were delivered to the Old Dominion Steamship Company, as set forth in question No. 1, and if they were never received by C. F. Flanary & Co., then how were the said goods lost; that is, were they lost by any of the defendant companies, and, if by any of the defendant companies, then by which of the defendant companies?" Answer: "They were lost by the Old Dominion Steamship Company and never delivered by it to the Norfolk & Western Railway Compny."

"(4) Did any of the defendant companies waive their right to insist upon the provision in the bill of lading, or contract of shipment, reading as follows, namely: 'Claims for loss or damage must be made in writing to the agent at point of delivery promptly after the arrival of the property, and if delayed for more than thirty days after the delivery of the property, or after due time for the delivery thereof, no carrier hereunder shall be liable in any event?' And, if so, which of them?" Answer: "Yes, all of them."

"(5) You will find whether or not C. F. Flanary & Co. or the shippers on behalf of C. F. Flanary & Co. filed in writing, claims for damages for the loss of the said goods with any of the said defendant companies; if so, which one, when and where?" Answer: "Yes, J. H. Dunham & Co., on behalf of C. F. Flanary & Co., sent tracers from New York on October 2, 1906, and filed claim in writing with Old Dominion Steamship Company in New York on October 27, 1906, for $302.01, for amount of goods contained in case No. 110, shipped by this company. The H. B. Claflin Company, on behalf of C. F. Flanary & Co., sent tracer from New York on October 2, 1906, and filed claim in writing with Old Dominion Steamship Company in New York on October 23, 1906, for $125.98 for amount of goods contained in case No. 72,798, shipped by this company."

The Old Dominion Steamship Company relied upon the facts that it had delivered all of the freight which it had received in good order at Norfolk, Va., to its connecting carrier, the Norfolk & Western Railway Company, and that it was not responsible to the defendant in error because of the stipulation in its bill of lading that "claims for loss or damage must be made in writing at point of delivery promptly after the arrival of the property, and if delayed for more than thirty days after the delivery of the property, or after due time for the delivery

thereof, no carrier hereunder shall be liable in any event."

In reply to the first contention, the defendant in error relies upon what is known as the Carmack amendment to the interstate commerce law (Act June 29, 1906, c. 3591, 34 Stat. 593 [U. S. Comp. St. Supp. 1909, p. 1167]), upon the authority of the decision of the Supreme Court of the United States in the case of Atlantic Coast Line Railroad Co. v. Riverside Mills (decided at the October term, 1919) 219 U. S. —, 31 Sup. Ct. 164, 54 L. Ed. —, we hold that the act in question is constitutional and valid.

* * * *

That disposes of the first contention of plaintiff in error.

With reference to the provision in the bill of lading by which the shipper is required to make claim for loss or damage in writing to the agent at the point of delivery promptly after the arrival of the property, and if delayed more than 30 days after the delivery of the property or after due time for the delivery thereof the carrier shall not be liable, Flanary & Co. insist that the benefit of this provision was waived by the plaintiff in error; that its conduct was such as to operate as an estoppel upon it; and that it will not be permitted to rely upon this provision in the bill of lading.

In the case of Liquid Carbonic Co. v. Norfolk & Western Ry. Co., 107 Va. 323, 58 S. E. 569, 13 L. R. A. (N. S.) 753, this subject was fully examined and the conclusion reached that: "A condition in a bill of lading that claims for loss or damage shall be made in writing to the carrier's agent at the point of delivery promptly after the arrival of the property, and if delayed more than 30 days after the delivery of the property, or after due time for the delivery thereof, there shall be no liability upon the carrier, is a reasonable provision and will be upheld. Such a provision contravenes no public policy and excuses no negligence, but is a reasonable regulation for the protection of the carrier from fraudulent imposition in the adjustment and payment of claims for goods alleged to have been lost or damaged."

The reasonableness of the rule approved in the case just cited receives additional force from the fact that the liability of the initial carrier under the Carmack amendment to the interstate commerce act having been established, thus rendering it responsible for the delinquencies of a connecting carrier, or for those occurring upon a line other than its own, it should receive prompt notice of the fact that it is to be held liable, in order that it may take steps to indemnify itself by fixing the responsibility where it justly belongs.

The case of Atlantic Coast Line R. Co. v. Bryan, 109 Va. 523, 65 S. E. 30, construes a similar provision of a bill of lading, reaffirms the position taken in Liquid Carbonic Company v. N. & W. Ry. Co., and holds that such a provision is a reasonable one, and, unless waived, is enforceable by the carrier in bar of any action by the shipper for such loss or damage. Treating of waiver, the court there said: "A waiver, to operate as such, must arise either by contract, or by estoppel. If by contract, it must be supported like any other contract, by a valuable consideration. If estoppel by conduct is relied on, the party sought to be estopped must have caused the other party to occupy a more disadvantageous position than he would have occupied but for that conduct." And that "an attempt by a carrier to find a lost shipment after its exemption from liability has attached and become a vested right by reason of the failure of the shipper to present a claim therefor within the time and at the place stipulated for in the bill of lading does not constitute a waiver of its right to claim such exemption, if the goods should not be located."

In the still more recent case of Virginia-Carolina Chem. Co. v. Southern Express Co., 110 Va. 666, 66 S. E. 838, the case of Liquid Carbonic Co. v. N. & W. Ry. Co., supra, is referred to and again approved. The subject of waiver was also considered, and the court said: "It is true that, after the time limit had expired and the liability of the defendant had ceased, the agents of the company were diligent in their efforts to lessen the plaintiff's damage, as far as practicable, by collections on the lost notes; and from that source the loss was reduced from $1,980,23, the face amount of the notes, to $776.05. Nevertheless, there is nothing in the record to warrant the assumption that the express company has by words or act admitted liability or waived its right to insist upon the exemption afforded by the 30 days' clause."

In this case the only conduct relied upon to estop the plaintiff in error from asserting its exemption under the provision quoted from the bill of lading is that tracers were sent out to find the lost property. It is nowhere suggested in the record that there was any intimation that the carrier did not intend to insist upon its rights. The request that tracers should be sent out is the only act upon the part of the consignee; the sending out of the tracers the only act upon the part of the carrier. It is not perceived that the defendant in error suffered any loss or damage, or was prejudiced, or was placed in any worse attitude, or was injured in any respect or in any degree whatever by what

was done. The shipments were made on the 5th day of September. According to the weight of evidence, the goods should have arrived at their destination at Wise, Va., on or about the 15th. But if 15 days instead of 10 be allowed as a reasonable time to cover their transportation, still the notice would be insufficient, for the notice was filed by the H. B. Claflin Company on behalf of C. F. Flanary & Co. on October 23, 1906, and by Dunham & Co. on behalf of C. F. Flanary & Co. on October 27, 1906.

We are therefore of opinion that the court erred in instructing the jury that: "If they believe from the evidence in this case that the bills of lading covering the shipments of goods and merchandise in the declaration mentioned contained a provision that claims for loss or damage must be made in writing to the agent at the point of delivery promptly after arrival of the property, and if delayed for more than 30 days after the delivery of the property, or after due time for the delivery thereof, no carrier thereunder should be liable in any event; yet if they further believe from the evidence that the defendants had notice of the failure to deliver said goods to plaintiffs, and that plaintiffs or some one of them requested defendants to send tracer after said shipments, and that defendants did endeavor to trace and locate said shipments—then plaintiffs would not be required to give such notice in writing, except within 30 days from the time defendants abandoned all efforts to trace and locate said shipments, and so notified plaintiffs of such abandonment.

"And the jury are further instructed that even though they may believe the said bills of lading contained a provision as aforesaid, yet if they further believe that the defendants, through the acts, representations, and conduct of its employes, or through the acts, representations, and conduct of the agent, or agents, of the Virginia & Kentucky Railway Company, at Wise, Va., with whom such claim in writing should be filed as provided in such provision, or clause, waived the requirement of such provision, and led the plaintiffs to believe that the requirement of such provision would not be insisted upon by defendants, then the plaintiffs are not barred from a recovery by reason of any failure on their part to make such claim or claims in writing to the agent at the point of delivery at Wise, Va."

We are further of opinion that the court should have given instruction No. 1, asked for by plaintiff in error, as follows: "The court instructs the jury that there is no evidence in the case that the defendant, the Old Dominion Steamship Company, ever waived the benefit of the stipulation contained in the bill of lading and quoted in paragraph 4 of the questions submitted. And the jury, in answering the question in said paragraph 4, should not answer that the said defendant, the Old Dominion Steamship Company, so waived the same."

For these reasons, the judgment of the circuit court must be reversed, and the cause remanded for a new trial in accordance with the views herein expressed.

CARDWELL, J., absent.

NOTE.—*Waiver by Carrier of Proper Notice, with Prescribed Time, of Claim by Shipper for Loss or Damage.*—The facts in the principal case as recited in the opinion, do not bear out the headnote. Yet the opinion also argues so as to ignore the fact, that the tracers were sent out before the time had expired. It seems to us this should make a difference. Some cases hold the waiver may arise out of action subsequent to the expiration of time. *A fortiori* would this seem to be true as to prior action. The courts generally say that, as the notice must be reasonable, it must be confined to cases where it operates reasonably—that is, it is something for protection. If protection is not needed it does not operate. We submit some cases.

In Blackmer & P. P. Co. v. M. & O. R. Co., 137 Mo. App. 479, 119 S. W., two shipments were made in September and October, 1903, and there was damage for which no written claim was made until April, 1904. At this time there was a correspondence between the plaintiff and the general freight agent of the railroad. In the freight agent's reply to the first letter of plaintiff he asked a correction by cutting out certain items and asked plaintiff to attach to its claim the original or duplicates of the bill of lading, so that investigation could proceed. Finally, in December, the general freight agent reported, declining to pay the claim because it was not thought the damage arose from the fault of the carrier and its connecting companies. The court ruled that this correspondence "shows conclusively said company waived the omission to give notice in thirty days." The court said, if notice given after the thirty days was, accepted and treated as a claim, the condition of the bill of lading would be deemed to have been waived.

This case refers to Summers v. Wabash R. Co., 114 Mo. App. 452. That cause does not show that a claim was not made within the required time, but the inference is that it was in time, as the case merely says: "The failure of the plaintiff to make affidavit to his claim of loss filed with defendant's general freight agent under the circumstances was evidently waived, because the agent made no objections to it for that reason, and entered into negotiations for settlement with the plaintiff. It was a question that was submited to the jury by an instruction and they found against the defendant, which is conclusive." This seems a very different question. Here the most that was waived, and that during the time within which notice could be given, was the form of the notice. It was acted on as sufficient in form.

In Kelly v. Southern Ry., 84 S. C. 249, 66 S. E. 198, it appears that a verbal notice was given to defendant's agent within the time and it sent its claim agent to examine into the condition of damaged flour and the claim agent then told

plaintiff to dispose of it to the best advantage and defendant would make it all right with him and he promised to let plaintiff hear from him right away. This was said to create a waiver as to time within which claim was to be filed. Here the occurrence being before the expiration of the limit and a *claim* agent expressing himself satisfied, there was a virtual acknowledgment by the railroad that it had all the information it needed.

Hoffman v. D. L. & W. R. R. Co., 39 Pa. Super. Ct. 47, shows there was evidence that the railroad had prompt notice of the non-delivery of the freight and defendant's agent undertook to locate and deliver the freight with dispatch. It was said "the conduct of the defendant with reference to the delivery of the property after notice of non-delivery brings the case within the doctrine of Eckert v. R. R. Co., 211 Pa. 267." Again we see a case of action within the limit of time.

In the Eckert case the requirement was the filing of a verified claim within five days after delivery. Upon arrival at destination horses shipped were in bad condition and one of the plaintiffs refused to receive them until he was directed by the agent to remove them from the car and hand in his bill for damages. This plaintiff wired the other who, within five days communicated with defendant's freight agent, who had acted for the company in shipping the horses. He told this plaintiff he would report it to the proper authorities and let him know. This he did, attaching to his letter a statement of the bill of lading, giving number of horses, etc. On the seventh day a letter detailing the damage and amount of claim was sent. Correspondence ensued and the claim was rejected. "It was not until the trial of the cause, nearly one year and a half after the plaintiff's stock had been injured that the company gave any intimation" about defense for non-filing of a verified claim in five days. All this was held "sufficient to go to the jury on the question of its waiver of the right to insist upon a formal written claim of plaintiff's loss." This case seemed a narrow one and long delay in setting up the defense was invoked to all the jury to say in effect whether this was a pure afterthought.

In Owen & McKinney v. L. & N. R. Co., 87 Ky. 626, it appears there was a stipulation by which notice in writing was to be given by the shipper, before stock is removed from its place of destination, of shipper's intention to claim damages for any injury sustained. The court, construing this contract, said it was not intended to exempt a railroad from liability for injury but there was a mere agreement by the shipper to give notice of his intention to sue before removing an injured animal. The company would then have opportunity to investigate at once the cause and extent of the injury so as to adjust the claim. It is not an unreasonable stipulation. But if the shipper, as in this case, receives other notice than in writing of the injury and acts on this by investigating the case, he must be considered to have regarded it as sufficient, and to have in effect waived other notice. This other notice was before the expiration of the limited time and the carrier acted on it.

In Harned v. Mo. Pac. R. Co., 51 Mo. App. 482, a decision by Kansas City Court of Appeals holds that the waiver may arise by acting on a notice filed after the time had passed for the giving of it, that is to say, the jury might take such fact into consideration along with other facts as evidence of waiver. It is not shown that the evidence offered to prove this fact was objected to, and it was argued that the limitation in time ought not to be applied in the case at all for other reasons. The case is one of the inconclusive kind, really deciding little or nothing in the way of a rule or principle.

In Ward v. Mo. Pac. R. Co., 158 Mo. 226, 58 S. W. 28, a stipulation for notice, while admitted to be proper when reasonable, was construed merely to give a carrier an opportunity "to guard itself from imposition and fraud that otherwise might be worked upon it." "If no harm was done or could have come to the defendant, by reason of the neglect of the plaintiff (if negligence it could be called) to give the designated notice, within the prescribed time, then the consideration for the required notice is wanting and defendant cannot complain of its non-observance." Here some freight was missing and after the local agent had searched in vain for it, oral notice and claim was given at the time. Later, after expiration of the time, the formal written notice was given. Court held the latter was a useless formality. Waiver is not argued here but it is simply said the facts show formal notice was unnecessary. This quite nearly eliminates the stipulation.

In Case v. C. C. C. & St. L. R. Co., 11 Ind. App. 517, 39 N. E. 426, the reasonableness of such a stipulation is declared and it is said strict performance may be waived or the circumstances may be such as to excuse the party from the presentation of the claim within the time prescribed, yet "mere knowledge by the agents of the company that the shipper claimed to have lost some of his stock, coupled with a search therefor along its right of way was not a waiver." This kind of a ruling gives some force to the stipulation. It is to be noticed, however, the case does not say that "knowledge" would not excuse a waiver. It says a claim acted on to some extent does not show waiver. A shipper ought to make action to escape liability compulsory.

C.

CORAM NON JUDICE.

SEMI-ANNUAL MEETING OF THE ILLINOIS STATE BAR ASSOCIATION, HELD AT SPRINGFIELD, FEBRUARY 16, '11.

Reform of the law of procedure and practice was the subject of discussion at the semi-annual meeting of the Illinois State Bar Association held at Springfield on February 16th. The Illinois Conference on the Reform of the Law, consisting of delegates from all parts of the state, proposed certain amendments to the Practice Act for discussion at this meeting The discussion was opened by Edgar B. Tolman of Chicago. President of the Conference. The proposed amendments which brought forth the most discussion were those relating to sections 73 and 74 of the present Practice Act. It is proposed to amend Section 73 so as to read as follows:

"Hereafter no judge shall instruct the petit jury in any case, civil or criminal, unless his charge is reduced to writing and he shall before the same is read to the jury submit it to the counsel for the respective parties and give

them an opportunity, in the absence of the jury, to state specifically all their objections to the instructions therein contained and to the refusal of the court to embody in his charge any instruction requested by counsel, together with the reasons for such objections."

It is pretty generally conceded that the amendment to this section would be a decided improvement on the present practice. It is substantially the practice now pursued in the State of Indiana.

The proposed amendment to section 74, which found both supporters and opponents, is as follows:

"Exceptions to the charge as read to the jury and to the refusal of the court to embody in his charge any instruction requested by counsel for the respective parties, may be entered at any time before the jury retires, but not afterwards, and no objections or exceptions shall be considered on review except those specially called to the attention of the court, as provided in the foregoing section."

It is believed that the proposed amendments to these two sections would be of far-reaching importance and highly beneficial to the practice. They would do much toward rescuing the practice in Illinois from the general charge made by President Taft last year in his speech at Chicago, wherein he said that the administration of justice in our courts was a disgrace to our civilization. These amendments must appeal to every lawyer who is honestly endeavoring to aid the court and jury to arrive at a correct conclusion of the case. If adopted, the court would be protected when instructing the jury, by the combined advice and counsel of the attorneys on both sides. It is believed that these proposed amendments would greatly reduce the number of retrials and also greatly diminish the number of appeals taken on account of erroneous instructions.

If the Judge who reads the instructions to the jury and the lawyer who wrote the instructions, as well as the attorney for the other side, are not misled by them and believe them to be the law when read to the jury, the laymen who compose the jury certainly will not be misled by them. The principle involved in both these proposed amendments is the correct one, viz: that the lawyers on both sides shall help the court in correctly applying the law to the case on trial and if they do not do so, they shall not be permitted to take advantage of their own negligence.

These amendments are now pending before the legislature and are incorporated in House Bill 418 and Senate Bill 327, together with the other amendments proposed by the Illinois Conference on the Reform of the Law.

The ceremonies attending the unveiling of the portraits of the former Justices of the Supreme Court were held in the Supreme Court building. The Supreme Court room was crowded with judges and lawyers representing all sections of the state. Chief Justice Alonzo K. Vickers opened the exercises. Edward C. Kramer, of East St. Louis, spoke on the Supreme Court under the Constitution of 1818. Stephen S. Gregory, of Chicago, had for his subject the Supreme Court under the Constitution of 1848, while President William R. Curran, of Pekin, delivered an address upon the Supreme Court under the Constitution of 1870. The response on behalf of the Court was made by Justice James H. Cartwright. The meeting closed with a banquet at the St. Nicholas Hotel at night, which was attended by about 300 members of the bar.

VALUE OF A WOMAN'S HEART.

What is the value of a woman's heart? What balm may be applied to the wounded feelings of a tender soul who discovers suddenly that she is not as much engaged as she thought she was?

Ten thousand dollars is the current market quotation on heart balm, as disclosed by two verdicts for that amount rendered by sympathetic jurors in New York this week.

In the first case, that of Miss Henrietta French, a South Dakota girl, who sued David H. Decker, jr., a civil engineer of this city, for breach of promise of marriage, Justice Erlanger announced that he would entertain a motion to set the verdict aside as excessive. But when we consider that the young woman, who must possess at least normal intelligence, had to receive and answer letters beginning "My ownty donty darlingest, sweet honey bunchums," we may not agree with the view of the learned court.

The other blighted young woman is Miss Fanny Libenau, to whom a jury in the city court awarded $10,000 for injuries to her affections inflicted by Joseph Krauss.

The question of whether or not Miss Bertha Grunspan, who is suing the millionaire, William English Walling, for $100,000 for a similar wound to her heart and hopes will receive a large financial poultice, is still to be determined by the jury which has heard her case.

But the problem involved in these three suits is a most interesting one.

Undoubtedly the strictly logical aspect of the breach of promise suit was presented by Justice Erlanger in the French-Decker case.

"Not a dollar of damages has been shown, except that naturally arising from the alleged breach. Not a dollar on wardrobe, wedding preparations, or anything else."

But what have the sordid questions of wardrobe, preparations, etc., to do with a broken heart?

How may the damages to a seared soul be assessed? The average woman, of course, does not feel a broken engagement so poignantly that she seeks or even thinks of financial balm. But the logic of the breach of promise suit is irresistible.

To a certain too frequent type of female, marriage in itself is a goal, an achievement irrespective of the individuality or personality of the husband. The conjugal state seems to be essentially more honorable and dignified than spinsterhood. Once having the goal in sight she does not forego it without a death struggle. From being assured of an easy livelihood, earned by some one else, she faces the prospect of a future of struggle and perhaps self-support. What is more natural for her than to seek to capitalize love's wounds.

After all, marriage as it is viewed at present by the majority of persons has as its basis the financial dependence of woman. A deserted wife asks and receives financial balm in the shape of alimony. Why should not a deserted fiancee have similar redress if she chooses to avail herself of it? For those who take the view that women should be supported by men, the justice of the breach of promise suit seems inevitable.

But should the extent of the damage be left to a susceptible jury to fix? Damages based on wardrobe purchased or wedding cake ordered are not adequate or reasonable. One can wear the clothes and eat the cake even though the faithless bridegroom should disappear.

But what can one do with a broken heart except to ask for balm for it? It seems to me that a fair basis of settlement would be the man's income. That is what fixes the amount of alimony.

One of the verdicts of $10,000 rendered this week was against a painter and decorator who has nothing but his trade by which to live. Yet he is mulcted for an amount that he cannot possibly pay, and a young man of some wealth, the defendant in the French case, gets off with damages for the same amount.

A man would give his heavenly bliss
And all his worldly worth for this;
To taste his whole heart in one kiss
Upon her perfect lips.

is the poetic as opposed to the legal view of what a woman's love is worth.

But perhaps if the highly respectable British poet who wrote that glowing estimate had ever been used for breach of promise he would have become as practical and matter-of-fact as Justice Erlanger.

Perhaps, after all, the only moral to be deduced from the week's crop of breach of promise cases is that now is a good time to sue.—N. Y. World.

CORRESPONDENCE.

IS THE INITIATIVE, REFERENDUM AND RECALL A REPUBLICAN FORM OF GOVERNMENT?

Editor Central Law Journal.

In a recent issue of your Journal, you ask for an expression from the profession generally upon the Initiative, Referendum and Recall, and particularly as to whether their adoption will destroy our representative form of government.

I have given some study to these matters during the last five or six years, and wish to place myself on record as most heartily in favor of the adoption of these reform measures. I do not believe that the adoption of the Initiative, Referendum and Recall will destroy our representative form of government. Under our present system, the plenary power of government rests with our representatives, while under the proposed changed form, the plenary power will remain with the people. These proposed changes simply limits the power of the representative, the representative system is not destroyed but changed. The representative under this plan will be relegated more nearly to the position of an agent. An adoption of these reform measures in this day of general enlightenment of the masses by means of the Public School System is not a dangerous innovation, and our republican institutions will suffer no deterioration from their hands. The time has arrived when the Hamiltonian system of government must give way to the Jeffersonian. To place the ultimate power in the hands of the representative 100 years ago in days of universal ignorance of the masses was undoubtedly good statesmanship, but to-day we have an educated electorate capable of self government. To the Initiative, Referendum and Recall I would add the Direct Primary and Civil Service laws; then, and then only, will we have a government of the people, by the people and from the people.

Respectfully yours,

J. A. CONDIT.

Salt Lake City, Utah.

BOOKS RECEIVED.

American State Reports, Vol. 135, containing the cases of general value and authority, subsequent to those contained in the "American Decisions" and the "American Reports," decided in the courts of last resort of the several states. Selected, reported and annotated by A. C. Freeman. Price $6.50 net. San Francisco, Calif. Bancroft-Whitney Co. Review will follow.

New York State Library—Yearbook of Legislation, Vol. 10, 1908. Legislation Bulletin. Price $1.00. Albany, N. Y. University of the State of New York. Review will follow.

Collier on Bankruptcy, Eight Edition. Law and Practice Rules and Forms. By Frank B. Gilbert. Price $7.50. Albany, N. Y. Matthew Bender & Co. Review will follow.

American and English Encyclopaedia of Law and Practice. Vol. 5. Price $7.50. New York. Edward Thompson Co. Review will follow.

Cyclopaedia of Law and Procedure. Vol. 36. Price $7.50. American Law Book Co. Review will follow.

American Digest. Vol. 9. Annotated. St. Paul, Minn. West Publishing Co. Review will follow.

HUMOR OF THE LAW.

The Reading Railway's lawyer was cross-examining a negro woman who had sworn she saw the train hit a milk wagon, whose bandaged driver had just testified. No, she had not heard the engineer blow any whistle.

"How near were you to the train?" the lawyer asked her, sharply.

She didn't know exactly.

"But how far?" the lawyer persisted. "A mile or a square or what? How long would it have taken you to walk the distance?"

"Suh," the witness replied, haughtily, "dat would depend entirely on ma speed"—Philadelphia Times.

Not long ago a young lawyer of Baltimore undertook the defense of an old negro who had been arrested for "helpin' hisself without askin'," and who in slavery days had once been owned by the young man's father. It was his first case, and his defense was not brilliant, either in construction or in delivery. The old darky received no mercy, his guilt being clearly proved.

"T'ank you, sah," the prisoner addressed the judge, cheerfully, after the sentence had been pronounced. "Tain't anywhar near's bad as I s'pected, sah. I t'ought sure, 'tween my character and pore Marse Frank's speech, dey'd hang me for sartain."

WEEKLY DIGEST.

Weekly Digest of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of all the Federal Courts.

1. **Accident Insurance**—Cause of Death—In an action on an accident policy, exempting death from drowning, evidence that others who went down in the same marine disaster with insured received injuries as the vessel sank did not warrant a presumption that insured died as the result of personal injuries.—Lewis v. Continental Casualty Co., Wash., 112 Pac. 91.

2. **Action**—Cause of Action.—A cause of action is the particular matter for which suit is brought.—Rochester Borough v. Kennedy, Pa., 78 Atl. 133.

3.——Statutory Remedies.—While at common law there was no action against the owner of a dog in favor of a person bitten, it is competent for the Legislature in granting such action to name it an action of tort.—Smith v Hallahan, N. H., 78 Atl. 122.

4. **Adverse Possession**— Tacking Successive Possessions.—Where title by adverse possession is to be sustained by the successive possession of several holders, the evidence of privity between them must be competent and clear.—Rushing v. Lanier, Tex., 132 S. W. 528.

5. **Arbitration and Award**—Majority Award.—Where two arbitrators were empowered to appoint a third without reference to whether the two were agreed or not, an award, in order to be binding, must be the award of all.—Tennessee Lumber Mfg. Co. v. Clark Bros. Co. (C. C. A.) 182 Fed. 618.

6. **Assumpsit, Action of**—Pleading.—Defendants' failure to plead that the suit was prematurely brought held not a waiver of the objection.—Stitzer v. United States (C. C. A.) 182 Fed. 513.

7. **Attorney and Client**—Lien of Attorney.—The lien of an attorney on the papers of his client coming into his possession extends only to the interest of the client, and, when that interest terminates, the lien of the attorney terminates.—Jackson v. American Cigar Box Co., 126 N. Y. Supp. 58.

8. **Bailment**—Loss of Property. — Where a husband was a bailee of his wife's ring, he had such a special property therein as entitled him to recover for its loss against defendant sleeping car company.—Godfrey v. Pullman Co., S. C., 69 S. S. 666.

9. **Bankruptcy**—Claims Enforceable.—A creditor, seeking to avoid his debtor's discharge in bankruptcy, held to have the burden of proving that his claim was within Bankr. Act.—Larsen v. Hyman, 126 N. Y. Supp. 100.

10.——Insurance Policy.—Where the interest of the beneficiary in a bankrupt's life policy was negligible, the surrender value constituted assets belonging to the bankrupt's trustee.—In re Herr, D. C., 182 Fed. 716.

11.——Jurisdiction.—Under General Corporation Law N. Y., a voluntary bankruptcy petition on behalf of a corporation, executed and filed by the president, held insufficient to confer jurisdiction.—In re Jefferson Casket Co., D. C., 182 Fed. 689.

12.——Loan to Pay Incumbrance.—On loan to pay incumbrance under an agreement by the owner to give like lien, the lender is subrogated to the incumbrance which he pays against the borrower's trustee in bankruptcy.—In re Lee (C. C. A.) 182 Fed. 579.

13.——Property Passing to Trustee.—A contract under which property was delivered to a bankrupt, denominated a lease, but which fixed no term, held not a lease, but a sale on condition, which under the law of Pennsylvania was void as to creditors and did not entitle the seller to reclaim the property from the bankrupt's trustee.—Liquid Carbonic Co. v. Quick (C. C. A.) 182 Fed. 603.

14.——Review.—The grant of jurisdiction to Circuit Court of Appeals to review by appeal or to revise proceedings in bankruptcy present cumulative methods of review, of which an agreed party has the choice.—In re Lee (C. C. A.) 182 Fed. 579.

15. **Banks and Banking**—Suretyship.—A bank has no power to make a guaranty except for the protection of its own rights, or as an incident to the transaction of its own business, unless specially authorized by law.—Ayer v. Hughes, S. C., 69 S. E .657.

16.——Unauthorized Use of Funds.—Where officers of a national bank conspire to pay the debt of one of them by making false entries, held, that the creditor reciving the amount of credit without sanction of the directors is liable to the bank therefor, though he may have had no knowledge of the officers' fraud.—Cobe v. Coughlin Hardware Co., Kan., 112 Pac. 115.

17. **Benefit Societies**—Regulation by Court.—A member of a beneficial association held not entitled to an injunction restraining the order from refusing him the privileges of membership; he not having appealed to the Grand Division of the order as he was entitled to do.—Crutcher v. Easter Division, No. 321, of Order of Railway Conductors of America, Mo., 132 S. W. 307.

18. **Bills and Notes**—Assignment.—Under Negotiable Instruments Law, the assignee of a bill of exchange takes it subject to the defense of failure of consideration for the acceptance. —Ferguson v. Netter, 126 N. Y Supp. 107.

19. **Cancellation of Instruments** — Proceedings.—Heirs at law held not precluded from seeking to set aside their ancestor's deed for undue influence because of his execution of an instrument invalid as a will, intended to effect the same purpose.—Boulanger v. Hetezel, N. J., 78 Atl. 150.

20.——Remedy at Law.—Remedy of grantor upon failure of grantee to carry out a collateral contract which was the consideration of the deed held not a cancellation of the deed, but an action for enforcement of the consideration.—Murkowski v. Murkowski, Wash., 112 Pac. 92.

21. **Carriers**—Discrimination.—The court in determining whether an interurban railway company is guilty of discrimination because it stops its cars at certain places and not at another held not entitled to consider the fact that it stops at once place where such stop is by virtue of a special contract suported by a valid consideration.—State v. Ogden Rapid Transit Co., Utah, 112 Pac. 120.

22.——Injury to Shipment.—Connecting carriers held both liable for injury to a shipment on a through bill of lading.—Houston, E. & W. T. Ry. Co. v. Waltman, Tex., 132 S. W. 518.

23.——Limited Liability.—In the absence of a valid reduced rate, a limited liability provision in a carrier's contract was unenforceable for want of consideration.—Grant v. Chicago, R. I. & P. Ry. Co., Mo., 132 S. W. 311.

24.——Nature or Value of Baggage.—A passenger is entitled to carry a reasonable amount of jewelry according to his condition and circumstances in life for use on any part of the journey.—Godfrey v. Pullman Co., S. C., 69 S. E. 666.

25.——Train Service.—A railroad company has the legal right to make reasonable rules and regulations for the running of its trains and the carriage of passengers thereon, and it incurs no legal liability because in following such reasonable regulations and train schedules it does not stop its through or limited trains at all stations, especially where it is not shown that it does not afford to the public adequate facilities for travel upon its road.—Kyle v. Chicago, R. I. & P. Ry. Co. (C. C. A.) 182 Fed. 613.

26. **Constitutional Law**—Constitutional Questions.—The mere invoking by a party of a provision of the Constitution does not demand its construction, but the case must involve it.—Davidson v. Hartford Life Ins. Co., Mo., 132 S. W. 291.

27.——Legislative Powers.—A provision in a statute which declares what the statute is intended to express does not violate Const. art. 3, as interfering with the right of the courts to construe statutes.—People v. Bowman, Ill., 93 N. E. 244.

28. **Contempt**—Imprisonment.—A person may be imprisoned for contempt for failing to turn over assets of an estate.—Ex parte Moran, Kan., 112 Pac. 94.

29. **Contracts**—Impossibility of Performance. —General rule as to liability of a party to a contract, where disabled from performing it without default on his part, held not to apply where performance becomes impossible by change in the law or by action taken under governmental authority.—Adler v. Miles, 126 N. Y. Supp. 135.

30.——Insurance.—It is no defense to a contract that has been performed by the promisee that the promisor knew that the agreement might aid the promisee to violate a law, when the promisor did not combine with the promisee and share in the benefits.—Mechanics' Ins. Co. of Philadelphia v. C. A. Hoover Distilling Co. (C. C. A.) 182 Fed. 590.

31.——Mutuality of Obligation.—An order for the publication of an advertisement which was merely accepted without obligation to publish it held to be lacking in mutuality, and unenforceable in so far as executory.—White v. Allen Kingston Motor Car. Co., 126 N. Y. Supp. 150.

32. **Corporations**—Execution of Deed.— The mere production of a deed duly executed in the name of a corporation by its treasurer with the corporate seal affixed is some evidence that the execution and delivery of the deed were authorized.—Bishop v. Burke, Mass., 93 N. E. 254.

33.——Necessary Parties in Suit Against.—The common stockholders of a corporation held indispensable parties to a suit by the preferred stockholders to establish their right to a lien on the franchises and property of the corporation.——Baltimore, C. & A. Ry. Co. v. Godefroy (C. C. A.) 182 Fed. 525.

34.——Stockholders.—A creditor of a corporation held not entitled to assert any liability against a stockholder purchasing in the open market stock represented on its face to be fully paid.—Bonet Const. Co. v. Central Amusement Co., Mo., 132 S. W. 270.

35.——Stockholders.—The owner of a paid subscription to the stock of a corporation is the full beneficial owner of the stock, a certificate of stock being merely evidence of ownership and during the time in which a company fails or refuses to issue a certificate to a subscriber who has paid in full, it is at most the holder of the naked legal title in trust for the beneficial owner.—Citizens' Savings & Trust Co. v. Illinois Cent. R. Co. (C. C. A.) 182 Fed. 607.

36.——Stock Subscriptions.—When a subscriber for corporate stock notified the corporation on receiving a notice for payment on his subscription that he would not pay and denied all liability, subsequent notices were unnecessary.—Louisiana Purchase Exposition Co. v. Schnurmacher, Mo., 132 S. W. 326.

37. **Courts**—Jurisdiction.—A court is an agency of the state by means of which justice is administered, and it may not exceed the powers vested in it for the sole reason that in its judgment it is necessary to exercise the power in the administration of justice.—State v. Ogden Rapid Transit Co., Utah, 112 Pac. 120.

38.——Jurisdiction. — In order to oust the Court of Appeals of jurisdiction on the ground that a constitutional question is involved, it must appear that the question was clearly presented in the record at the first opportunity afforded in the trial court.—Davidson v. Hartford Life Ins. Co., Mo., 132 S. W. 291.

39. **Criminal Law**—Defenses.—No man can escape punishment when he participates in a crime on the ground that he simply acted as agent.—Buchanan v. State, Okl., 112 Pac. 32.

40.——Knowledge of Unlawful Purpose.—The probability that one will communicate a matter

to another, arising from the fact that he knows it, held insufficient to warrant an inference that a conspirator communicated the unlawful purpose to his brother.—Goss v. Burt, Vt., 78 Atl. 120.

41.——Other Offenses.—In a prosecution for threats with intent to extort money, evidence of similar offenses committed about the same time is admissible.—State v. Vertrees, Nev., 112 Pac. 42.

42.——Parties to Offense.—One committing a prohibited act held not entitled to interpose the defense that he acted only as agent or employe.—State v. Chauvin, Mo., 132 S. W. 243.

43. **Criminal Trial**—Reputation of Accused.—Where accused put his general reputation in issue, the commonwealth held entitled to show his bad reputation as to the law alleged to have been violated by him.—Commonwealth v. Maddocks, Mass., 93 N. E. 253.

44. **Damages**—Compensatory Damages. — In proving compensatory damages, the measure by which the amount may be ascertained must be fixed with reasonable certainty; otherwise a verdict is not supported.—Rodgers v. Bailey, W. Va., 69 S. E. 698.

45. **Deeds**—Construction.—The words of a private grant, if equally susceptible of two meanings, will be taken most strongly against him who uses them.—Crane v. McMurrie, N. J., 78 Atl. 170.

46.——Delivery.—The burden of showing the delivery of a deed is upon the party claiming delivery.—Schaffner v. Voss, Ind., 93 N. E. 255.

47.——Reservation.—Where two deeds to different pieces of land to the same grantee are executed and delivered at the same time, the law will presume that they were delivered in the order of priority necessary to give effect to the intent of the parties.—Blum v. Parson Mfg. Co., N. J., 78 Atl. 174.

48.——Subsequent Act of Grantor.—A grantor cannot by creating practical difficulties after he had made a grant that is free from them defeat the grant or influence its legal construction.—Crane v. McMurrie, N. J., 78 Atl. 170.

49. **Depositions**—Use by Opposite Party.—Plaintiff having taken the deposition of a witness could not prevent defendant's introducing it to obtain benefit of answers strictly in response to the interrogatories and unfavorable to plaintiff on the ground that they were self-serving declarations.—Evertson v. Warrach, Tex., 132 S. W. 514.

50. **Dismissal and Nonsuit**—Power of Court.—The power to allow a nonsuit or a discontinuance or the withdrawal of any claim by a party is exercised at the discretion of the court.—Edens v. Epps, S. C., 69 S. E. 669.

51. **Divorce**—Alimony.—It was within the trial court's discretion in an action for divorce to grant plaintiff attorney's fees and costs, though granting defendant a divorce on his cross-complaint.—Van Gelder v. Van Gelder, Wash., 112 Pac. 86.

52.——Cruelty.—A husband's refusal to speak to his wife and either accompany her to the neighbors or allow them to visit her held cruel and inhuman treatment.—Zweig v. Zweig, Ind., 93 N. E. 234.

53.——Temporary Alimony.—Where an application is made to modify a divorce decree, the court can grant plaintiff suit money to enable her to defend against such application.—Smith v. Smith, Mo., 132 S. W. 312.

54. **Ejectment**—Cause of Action.—In ejectment, the cause of action is the possession of land by one to the exclusion of another entitled to the possession of it.—Rochester Borough v. Kennedy, Pa., 78 Atl. 133.

55. **Estoppel**—Grounds.—Where one seeks the benefit of an estoppel, and has knowledge or means of knowledge as to all the facts equal to that possessed by the one against whom the estoppel is urged, there can be no estoppel.—State v. Mutual Life Ins. Co. of New York, Ind., 93 N. E. 213.

56.——What Constitutes.—To work an estoppel by conduct, the circumstances must have imposed on the person sought to be estopped the duty of speaking or acting, with an opportunity so to do.—Macomber v. Kinney, Minn., 128 N. W. 1001.

57. **Evidence**—Action for Water Furnished.—In an action to recover for water, it could not be assumed that all of complainant's meters registered accurately, where such presumption led to a conclusion that defendant unlawfully abstracted water from plaintiff's main.—City of Bayonne v. Standard Oil Co., N. J., 78 Atl. 146.

58.——Conclusiveness.—A mere declaration by the Secretary of State as to his understanding when he issued a certificate to a corporation is not competent to impeach the certificate.—In re Los Angeles Trust Co., Cal., 112 Pac. 56.

59.——Judicial Notice.—A court may take judicial notice that a certain slope in a sidewalk towards the curb is not unusual.—Owen v. City of New York, 126 N. Y. Supp. 38.

60.——Opinions of Nonexpert.—A nonexpert witness will be allowed to express an opinion upon an issue of sanity only after he has testified to acts, conversations, or conduct, which to some extent indicate sanity.—Auld v. Cathro, N. D., 128 N. W. 1025.

61.——Written Contract.—A written contract for the sale of goods cannot be reformed by a contemporaneous oral agreement. — American Fruit Produce Co. v. Barrett & Barrett, Minn., 128 N. W. 1009.

62. **Execution**—Nature and Form.—A judgment in a suit held none the less final and enforceable by execution immediately after docket because containing a provision for a sale of land in satisfaction of a part of the claim.—Belfer v. Ludlow, 126 N. Y. Supp. 130.

63. **Executors and Administrators**—Duties of Executors.—The general duties of an executor are to collect the effects of decedent, to pay the claims against his estate, and distribute the residue to those entitled thereto.—In re Hibler's Estate, N. J., 78 Atl. 188.

64. **Exemptions**—Conditional Sale.—An agreement in a conditional contract of sale, waiving all homestead and other exemption rights with reference to the piano sold, is void as against public policy, the piano being a part of the buyer's household goods.—Moore v. Bloomingdale, 126 N. Y. Supp. 125.

65. **Fire Insurance**—False Representations.—It was a material misrepresentation in the application for insurance on an automobile that it was a 1907 model, where it was in fact a 1906 model, precluding recovery on the policy.—Harris v. St. Paul Fire & Marine Ins. Co., 126 N. Y. Supp. 118.

66. **Fraud**—Action for Damage.—An action for damages for fraud inducing the execution of instruments rests on an affirmance of the instruments, and plaintiff need not return, or offer to return, the consideration received.—Anderson v. Smitley, 126 N. Y. Supp. 25.

67. **Gaming** — Criminal Offense. — One in charge and control of a gambling device owned by a club held guilty of maintaining a gambling device.—State v. Chauvin, Mo., 132 S. W. 243.

68. **Garnishment**—Salary.—Salary of defendant may be garnished as soon as earned, though before it becomes due, but not before it is earned.—Bambrick v. Bambrick Bros. Const. Co., Mo., 132 S. W. 322.

69. **Gifts**—Delivery.—A redelivery to the donor as agent of the donee or for safe-keeping will not nullify the gift.—Hess v. Hartwig, Kan., 112 Pac. 99.

70. **Guardian and Ward**—Care of Ward's Property.—A guardian has no legal right to use his ward's money to pay his own debts even though he expects to return it.—Moore v. Smith (C. C. A.) 182 Fed. 540.

71. **Homicide**—Manslaughter.—An epithet accompanying a demonstration of intended violence to decedent held sufficient to arouse the passion so as to reduce a killing to manslaughter in the third degree.—State v. Hanson, Mo., 132 S. W. 245.

72.——Peace Officer.—A peace officer killing decedent while resisting arrest, or attempting a rescue held guilty of manslaughter in the fourth degree where he used more force than was reasonably necessary.—State v. Montgomery, Mo., 132 S. W. 232.

73. **Husband and Wife**—Separate Property.—Where the husband had occupied a ranch for many years before his marriage under a claim

of ownership, the fact that his title to a part of the land was not perfected by conveyance until thereafter would not affect the character of the land as separate property.—In re Pepper's Estate, Cal., 112 Pac. 62.

74. **Indictment and Information**—Statutory Offenses.—The phrase "properly guarded" in the statute requiring enumerated machinery to be properly guarded, held a relative term, and involves the extent of guarding and the question of the efficiency of the machinery for the purpose intended.—State v. Rodgers, Ind., 93 N. E. 223.

75. **Injunction** — Irreparable Injury. — The threatened breach by one party of a contract between two railroad companies for a division of rates on through shipments held ground for an injunction.—Malvern & F. V. R. Co. v. Chicago, R. I. & P. Ry. Co. (C. C.) 182 Fed. 685.

76.——Subjects.—The act for the suppression of vice and immorality, including Sunday baseball, is not enforceable in a court of equity.—McMillan v. Kuehnle, N. J., 78 Atl. 185.

77. **Interstate Commerce**—Injury to Railroad Employe.—Act April 22, 1908, imposing on interstate carriers liability to employes engaged in interstate commerce for injuries received through negligence of fellow servants, held a valid regulation of interstate commerce.—Owens v. Chicago Great Western Ry. Co., Minn., 128 N. W. 1011.

78. **Intoxicating Liquors**—Illegal Sale.—Any person acting as agent in purchasing liquor for another may be convicted for a sale.—Buchanan v. State, Okl., 112 Pac. 32.

79.——Validity of Insurance.—Defense to an action on an insurance policy of certain liquor, on the ground that they are in violation of the statute of a state prohibiting the sale and possession of such an article, must be pleaded.—Mechanics' Ins. Co. of Philadelphia v. C. A. Hoover Distilling Co. (C. C. A.) 182 Fed. 590.

80. **Judgment**—Arrest of Judgment.—That a juror had been sworn, and had participated under a different name in a former trial between the same parties on the same pleadings, held no ground for arrest of judgment.—De Mateo v. Perano, N. J., 78 Atl. 162.

81. **Judicial Sales**—Defect in Title.—That a purchaser of land at an equity sale had actual notice of a defect in the title, or had, before his bid, discovered such defect by an examination of the record, would be good ground for denying him any relief.—Virginia-Carolina Chemical Co. v. McLucas, S. C., 69 S. E. 670.

82.——Rights of Bidders.—A bidder at a sale of land under a decree rendered in the exercise of the chancery jurisdiction of the court is entitled to a reasonable time to ascertain whether the title is defective.—Virginia-Carolina Chemical Co. v. McLucas, S. C., 69 S. E. 670.

83. **Jury**—Right to Jury Trial.—In trover for conversion of personal property, the court erred in denying defendant a jury trial on the ground that the issues were so complicated that the jury could not clearly understand them.—Daley v. Kennett, N. H., 78 Atl. 123.

84. **Landlord and Tenant**—Liability for Rent. —Where premises were leased for a designated purpose which was made unlawful by subsequent city ordinance, held, that the lessee was discharged from payment of rent.—Adler v. Miles, 126 N. Y. Supp. 135.

85.——Personal Injuries.—Where there was no evidence that defendant, the vendee of premises subject to a lease, was ever in possession, plaintiff could not recover for injuries through falling into a coal hole in front of the premises.—Delaney v. New York Polyclinic Medical School and Hospital, 126 N. Y. Supp. 94.

86.——Use and Enjoyment of Premises.—The obligation of a landlord not to disturb his tenant by work on adjoining property is a personal one and is not discharged by delegating the work to a competent independent contractor.—Paltey v. Egan, N. Y., 93 N. E. 267.

87. **Libel and Slander**—Malice.—Proof of express malice in the publication of a libel may be dispensed with, if it appears on the face of the article or from the wanton, careless, or reckless manner of its publication.—Astruc v. Star Co. (C. C.) 182 Fed. 705.

88. **Life Estates**—Obligations of Life Tenant. —The ordinary remedy to compel a life tenant to make repairs to prevent a deterioration of the property held by mandatory injunction, and not by the appointment of a receiver.—Sawyer v. Adams, 126 N. Y. Supp. 128.

89. **Limitation of Actions**—Debts Due on Demand.—Agreement by a creditor to "carry the debt" without any agrement as to length of credit would not take the case out of the rule respecting limitations concerning debts due on demand.—Stacy v. Parker, Tex., 132 S. W. 532.

90.——Presumptions.—There is no presumption that an indorsement of payment on a promissory note made in the payee's handwriting was made at the time of its date, so as to take the debt out of the statute.—Smith v. Brinkley, Mo., 132 S. W. 301.

91. **Mandamus**—Carriers.—Where the duty of a carrier to receive a particular person at a particular place is clear, the courts may by mandamus compel the carrier to discharge the duty. —State v. Ogden Rapid Transit Co., Utah, 112 Pac. 120.

92. **Marshaling Assets and Securities** — Release of Part of Security.—The recording of a second mortgage does not constitute constructive notice to the first mortgagee of the existence of the second mortgage.—Association to Provide and Maintain a Home for the Friendless v. Traders' Inv. Co., N. J., 78 Atl. 158.

93. **Master and Servant**—Injuries to Servant. —A master has a right to presume that a servant will guard himself against injuries where danger is patent.—Omans v. Hammond Packing Co., Mo., 132 S. W. 283.

94.——Obvious Dangers.—The principle that a master is not bound to guard the servant against obvious danger held to apply in a case of injury to a railroad employe by ties falling on his foot while he and others were piling them on a car.—Simpson v. Southern Ry. Co., N. C., 69 S. E. 683.

95.——Safe Place to Work.—A master held to owe to his servant the duty to carefully inspect at reasonable intervals the machinery, ways, and appliances provided for the use of the servant in the performanc of his work.—West v. Brevard Tannin Co., N. C., 69 S. E. 687.

96.——Safe Place to Work.—The master's duty to supply the employe with a reasonably safe place to work does not extend to ordinary conditions which arise in the course of the work, and may be guarded against by the exercise of reasonable care.—Simpson v. Southern Ry. Co., N. C., 69 S. E. 683.

97. **Mines and Minerals**—Forest Reserve.— The rights of a locator of a mining claim on a forest reserve under Act Cong. June 4, 1897, c. 2, 30 Stat. 34 (U. S. Comp. St. 1901, p. 1538), are those of a locator on the public domain, under Rev. St. sec. 2322 (U. S. Comp. St. 1901, p. 1425).—United States v. Rizzinelli, D. C., 182 Fed. 675.

98.——Right to Exploit Lands.—Land on which a homestead entry has been made may not be exploited by another merely to see if it possesses mineral value.—McLemore v. Express Oil Co., Cal., 112 Pac. 59.

99. **Money Received**—Grounds of Action.— Where a person has obtained money to which he is not entitled, but which in right and justice belongs to another, an action may be maintained for its recovery by such person on an implied agreement on the part of the person obtaining the money to refund.—State v. Mutual Life Ins. Co. of New York City, Ind., 93 N. E. 213.

100. **Mortgages**—Rights of Bidders.—A bidder at a foreclosure sale, held not chargeable with interest on his bid and, consequently, the assignee of the bid also not liable therefor.—Virginia-Carolina Chemical Co. v. McLucas, S. C., 69 S. E. 670.

101. **Municipal Corporations**—Sidewalks.— A city held not liable for injury in slipping on a sidewalk because of its grade if it was constructed according to a plan and on a grade established by the proper local authorities.—Owen v. City of New York, 126 N. Y. Supp. 38.

102. **Navigable Waters**—Littoral Rights. — Plaintiff's littoral rights on the shore of an ocean inlet by reason of the ownership of up-

land held not barred by a railroad right of way cutting off a part of the upland.—Dalton v. Hazelet (C. C. A.) 182 Fed. 561.

103.——Obstruction.—In an action for obstructing a navigable stream, delaying plaintiff's log raft, plaintiff held not entitled to recover punitive damages, though such obstruction is a misdemeanor.—Warren v. Coharie Lumber Co., N. C., 69 S. E. 635.

104. **Negligence**—Accident.—One who is injured through an accident has no legal remedy.—Simpson v. Southern Ry. Co., N. C., 69 S. E. 683.

105.——Willful Negligence.—To render an act resulting in injury to a trespasser willful, there must be evidence tending to show maliciousness and an intent to do an injury.—Hoberg v. Collins, Lavery & Co., N. J., 78 Atl. 166.

106. **Partnership**—Acts of Surviving Partner. —Advantages and waivers secured by a surviving partner by his exercise of control de son tort over the partnership estate, held to inure to the benefit of the estate.—Snyder v. Harrington, Or., 112 Pac. 6.

107. **Patents**—Improvement Patents. — That an improvement on a patented device, made by its inventor, may have seemed simple or obvious to him, and may to others after it was made, does not necessarily show that it involved only mechanical skill nor deprive him of the right to a patent therefor.—National Malleable Casting Co. v. American Steel Foundries (C. C.) 182 Fed. 626.

108.——Infringement.—The fact that the patentee of a furnace was at the time president of a corporation engaged in making furnaces does not entitle the company to the right to use the invention.—American Stoker Co. v. Underfeed Stoker Co. of America (C. C.) 182 Fed. 642.

109. **Pledges**—Rights of Pledgee.—A pledgee who has incurred expenses held entitled to reimbursement therefor, so that the mere payment of the amount of the principal with interest does not release the collateral.—Jackson v. American Cigar Box Co., 126 N. Y. Supp. 58.

110. **Principal and Agent**—Evidence. — An agent may testify to the fact that he is the agent of his principal, though his declarations to that end are inadmissible.—Dierks Lumber & Coal Co. v. Coffman Bros., Ark., 132 S. W. 654.

111. **Property**—Rights of Land Owners.—A landowner may impose on his land any burden not inconsistent with his general right of ownership, and not contrary to public policy or the property rights of others.—Allerton v. New York, L. & W. Ry. Co., N. Y., 93 N. E. 270.

112. **Public Lands**—Sales.—Where no valid contract for the sale of public lands has been entered into between the state and a purchaser, and no right has vested in the latter, the withdrawal of the land from sale by repeal of the statute authorizing sales or otherwise precludes the government officers from transferring title.—Messenger v. Kigsbury, Cal., 112 Pac. 65.

113. **Quieting Title**—Mortgagee in Possession. —Where defendant claims title, but prays, if it is held invalid, he may be adjudged a mortgagee in possession, he is not estopped from asserting his claim by failure to account for rents received.—Robertson v. Bear, Kan., 112 Pac. 101.

114. **Railroads**—Commencement of Relation of Passenger.—A passenger becomes such when, intending to take passage, he enters a place provided for passengers at a time when it is open, for the reception of persons intending to take passage.—Mitchell v. Augusta & A. Ry. Co., S. C., 69 S. E. 664.

115.——Obstruction of Highway.—An indictment against a railroad for obstructing a public road with one of its trains held not insufficient for failing to designate the particular train or the time when the offense was committed.—State v. Baltimore & O. R. Co., W. Va., 69 S. E. 703.

116.——Relation of Carrier and Passenger.—That a person entering a car has purchased no ticket does not necessarily prevent the relation of carrier and passenger from existing.—Messenger v. Valley City Street & Interurban Ry. Co., N. D., 128 N. W. 1023.

117. **Reformation of Instruments**—Mistake.—A contract entered into under mistake of one party as to its legal effect, with inequitable conduct on the part of the other, may be reformed. —American Fruit Product Co. v. Barrett & Barrett, Minn., 128 N. W. 1009.

118. **Release**—Validity.—The validity of an employe's release of his claim for negligent injuries must be tested, as to the mental capacity of the employe and fairness of the settlement, by the conditions then existing and of which the master had notice.—West v. Seaboard Air Line Ry. Co., N. C., 69 S. E. 676.

119. **Removal of Causes**—Grounds.—A cause of action cannot be removed to a federal court as involving the Constitution or laws of the United States unless it might have been originally brought there.—Canary Oil Co. v. Standard Asphalt & Rubber Co. (C. C.) 182 Fed. 663.

120. **Sales**—Books of Account.—Books of account are ordinarily prima facie evidence of a sale and delivery of personal property in the ordinary course of business.—City of Bayonne v. Standard Oil Co., N. J., 78 Atl. 146.

121.——Buyer's Defense.—Where the buyer of goods, to be of merchantable quality, accepted the seller's draft and thereafter rightly refused to accept the goods on account of their inferior quality, the consideration for his acceptance of the draft failed, and the seller cannot recover thereon.—Ferguson v. Netter, 126 N. Y. Supp. 107.

122.——Conditional Sale.—A contract of sale on a printed form, which was retained by the seller after being signed by the buyer, to whom no copy was ever delivered must be construed strictly against the seller, when offered by him in an action between the parties.—Moore v. Bloomingdale, 126 N. Y. Supp. 125.

123. **States**—Act Authorizing Issuance of Bonds.—An act authorizing the issuance of bonds of the state to pay the amount found due a university, on an accounting by the Legislature, held not invalid as a gift to the university. —Hanly v. Sims, Ind., 93 N. E. 228.

124.——Liability for Damages.—In the absence of a statute creating a liability, the state is not liable for damages for an injury from the misconduct, negligence, or tortious acts of its officers or agents.—State v. Mutual Life Ins. Co. of New York, Ind., 93 N. E. 213.

125. **Street Railroads**—Crossing Accident.—A vehicle driver may not calculate close chances as to his ability to reach a street car track before the car.—Nappli v. Seattle, R. & S. Ry. Co., Wash., 112 Pac. 89.

126. **Telegraphs and Telephones**—Oppressive Rates.—A contract between two telephone companies for exclusive toll business held not invalid on the ground that one of the companies is given the right to fix tolls, where it does not exercise the right and where the tolls are not oppressive.—Home Telephone Co. v. North Manchester Telephone Co., Ind., 93 N. E. 234.

127. **Trover and Conversion** — Damages. — Where trees or soil are converted by the tenant, the owner may recover its value as enhanced by the labor of the wrongdoer.—Evans v. Koun, Minn., 128 N. W. 1006.

128. **Water and Water Courses**—Liability for Injury to Land.—An owner of property damaged by a flood caused by the negligence of the owner of a dam and by an act of God held entitled to recover from the owner of the dam provided his negligence was the proximate cause of the injury.—Frederick v. Hale, Mont., 112 Pac. 70.

129. **Wills**—Rights of Devisees.—A wife, to whom her husband's will gave all his real estate so long as she should remain his widow, held not required, under the statute then in force, to elect between her distributive share of the real estate and the provision of the will.— Archer v. Barnes, Iowa, 128 N. W. 969.

130.——Undue Influence.—Whether a will is the result of undue influence of the principal beneficiary depends principally on the mental and physical condition of the testator.—In re Kindberg's Will, 126 N. Y. Supp. 33.